BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

BRANDI MILFORD	)	
Claimant	)	
VS.	)	
	)	Docket No. 256,599
FABPRO ORIENTED POLYMERS, INC.	)	
Respondent	)	
AND	)	
	)	
TRAVELERS INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appeal from the April 3, 2001 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

Judge Clark granted claimant's request for temporary total disability compensation and medical treatment, authorizing Tyrone D. Artz, M.D., to continue as claimant's treating physician. Claimant alleges she injured her bilateral upper extremities, shoulders and neck through a series of accidents that occurred each and every working day from April 18, 2000 until June 18, 2000, her last day of work. For purposes of this review, respondent does not deny claimant suffered a work related injury. However, respondent contends that claimant's current condition and need for medical treatment is due to intervening injuries sustained during claimant's subsequent work with another employer. Claimant counters that her current condition and need for medical treatment is a direct and natural consequence of her original injuries with respondent. Therefore, the issue is whether claimant's current need for preliminary hearing benefits is due to an accidental injury that arose out of and in the course of claimant's employment with respondent.

FINDINGS OF FACT

1. Claimant worked for respondent almost two years, from July 1998 until June 18, 2000. She held several different positions, but all her jobs involved repetitive hand intensive work and lifting.

2. After claimant reported her symptoms to her supervisors she was moved around to different positions. Nevertheless, her symptoms persisted and even worsened. Respondent sent her for medical treatment, first with Dr. Shane Alexander and later to Dr. Tyrone D. Artz. Dr. Artz diagnosed bilateral carpal tunnel syndrome (CTS) and a ganglion cyst on claimant's

left wrist. He also noted a possible thoracic outlet syndrome for which he consulted with Dr. Douglas J. Milfeld.

3. On June 18, 2000, while still treating with Dr. Artz, claimant was terminated by respondent.

4. The record shows claimant underwent right CTS surgery on August 30, 2000 and that surgery was performed on the left on October 4, 2000. Claimant was rated and released to return to work with restrictions on November 27, 2000 by Dr. Artz. She returned to work December 1, 2000 at Kingman Processing Plant. Claimant worked a total of nine days during December performing light duty tasks within her restrictions, including answering the telephone, labeling products and checking customer purchases. Because her symptoms increased, claimant returned to Dr. Artz on January 8, 2001, and was again taken off work.

5. Respondent contends this subsequent work aggravated claimant's condition. But respondent does not refer the Board to any medical opinion that attributes claimant's condition to her employment at Kingman Processing Plant. The Board's review of the exhibits likewise fails to disclose such an opinion. Dr. Artz continues to attribute claimant's condition to her work with respondent. In addition, claimant's counsel sent her for an evaluation by Dr. Pedro A. Murati. In a report dated February 12, 2001, Dr. Murati likewise attributes claimant's current condition to her employment with respondent and recommends additional testing and treatment.

CONCLUSIONS OF LAW

The Workers Compensation Act places the burden of proof upon claimant to establish her right to an award of compensation and to prove the conditions on which that right depends.[1] "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."[2]

An injury arises out of employment if it arises out of the nature, conditions, obligations, and incidents of the employment.[3] Whether an accident arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case.[4] Although it is not clear whether claimant is alleging a series of accidents ending April 18, 2000 or a series through her last day worked with respondent on June 18, 2000, respondent does not

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[1] K.S.A. 44-510(a); *see also* Chandler v. Central Oil Corp., 253 Kan. 50, 853 P.2d 649 (1993) and Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

[2] K.S.A. 44-508(g). *See also* *In re* Estate of Robinson, 236 Kan. 431, 690 P.2d 1383 (1984).

[3] Brobst v. Brighton Place North, 24 Kan. App. 2d 766,771, 955 P.2d 1315 (1997).

[4] Springston v. IML Freight, Inc., 10 Kan. App. 2d 501, 704 P.2d 394, *rev. denied* 238 Kan. 878 (1985).

dispute that claimant suffered a work related injury. Accordingly, respondent remains responsible for claimant's benefits absent an intervening injury or aggravation.[5]

Respondent alleges that the work claimant performed for her subsequent employer, Kingman Processing Plant, caused an aggravation of her condition. It is well settled in this State that an accidental injury is compensable even where the accident only serves to aggravate or accelerate an existing disease or intensifies the affliction.[6] "The test is not whether the job-related activity or injury caused the condition but whether the job-related activity or injury aggravated or accelerated the condition."[7] The record in this case, however, fails to establish an intervening injury or aggravation that is a new accident under the Workers Compensation Act.

Based upon the record compiled to date the Board finds claimant's present condition is compensable as a natural progression of her prior work related condition. Therefore, the ALJ's decision to award preliminary benefits against respondent should be affirmed.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.[8]

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge John D. Clark on April 3, 2001, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of June 2001.

BOARD MEMBER

c: Robert E. Shaver, Wichita, KS
William L. Townsley, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director

[5] Nance v. Harvey County, 263 Kan. 542, 952 P.2d 411 (1997).

[6] Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978); Chinn v. Gay & Taylor, Inc., 219 Kan. 196, 547 P.2d 751 (1976); Harris v. Cessna Aircraft Co., 9 Kan. App. 2d 334, 678 P.2d 178 (1984).

[7] Hanson v. Logan U.S.D. 326, 28 Kan. App. 2d 92, 11 P.3d 1184, *rev. denied* ___ Kan. ___ (2001).

[8] K.S.A. 44-534a(a)(2).